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Before the
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

In the Matter of)
) CRT Docket No. 84-1
1983 Cable Royalty Distribution)
Proceeding)

COMMENTS OF THE DEVOTIONAL CLAIMANTS
RE NAB'S MOTION FOR DECLARATORY RULING

The Devotional Claimants, by their attorneys, hereby respectfully submit their response to the Motion for Declaratory Ruling filed by the National Association of Broadcasters ("NAB") on April 24, 1985.

In 1980, the FCC repealed its syndicated exclusivity rules (45 C.F.R. 76.151 et seq.). As a result, the Tribunal imposed a special syndicated exclusivity surcharge on the compulsory license fees paid by cable systems in the top 100 markets. These fees went into effect during the first accounting period of 1983.

In its Motion for Declaratory Ruling, NAB suggests that the Tribunal segregate from the remainder of the 1983 royalty fund, for allocation purposes, that portion of the 1983 cable copyright royalty fund paid by cable operators as a result of the syndicated exclusivity surcharge. NAB requests the Tribunal issue a declaratory ruling that commercial television broadcasters are entitled to all of the funds generated as a result of the syndicated exclusivity surcharge (except those portions allocated to

syndicators for loss of "pre-clearance" rights and to Music Claimants).

The Devotional Claimants note that, in its direct case, the Motion Picture Association of America, Inc. ("MPAA") has also argued that the 1983 royalty fund should be segregated into distinct royalty "pools" based on the manner in which compulsory license fees were computed by affected cable systems. One of the "pools" posited by MPAA relates to the funds generated as a result of the syndicated exclusivity surcharge. Counsel for MPAA has stated that MPAA "will establish that, as a matter of law, they are entitled to all of the Syndicated Exclusivity Pool." See also the Testimony of Henry Geller and Jon A. Baumgarten.

Nowhere in Section 111 of the Copyright Act does Congress provide for the segregation of the cable compulsory license fees into distinct royalty "pools," in which only certain categories of copyright owners will be eligible to participate or to obtain compensation. Indeed, the Act contemplates a single royalty fund, and explicitly states that the fees comprising that fund shall be distributed among all copyright owners whose works were carried on a distant signal basis by cable systems. See 17 U.S.C. 111(d)(4). There is simply no legal basis for segregating the fund into "pools" or subfunds, or of preventing all eligible claimants from sharing in the entire royalty fund.

The argument of NAB (and of MPAA) is premised on the concept that royalties should be paid out of the fund on the same basis that compulsory license fees are paid into the fund. In other words, there should be a direct relationship between pay-in and

pay-out. As National Public Radio ("NPR") aptly notes in its May 20, 1985, memorandum, this is a "fee generation" approach. There is no logical difference between the position now taken by NAB (and MPAA) and the "fee generation" premise advocated by MPAA in the 1978 Cable Royalty Distribution Proceeding.

The Devotional Claimants are constrained to note that this Tribunal has previously rejected reliance on fee generation methodology. See Notice of Final Determination, 45 Fed. Reg. 63026 (Sept. 23, 1980); and Notice of Final Determination, 47 Fed. Reg. 9879 (March 8, 1982). Thus, this Tribunal's own precedent is contrary to the position of NAB (and MPAA).

Should the Tribunal accept the analysis now being pressed by NAB and MPAA, and segregate the royalty fund into distinct "pools" from which only certain categories of claimants will be entitled to receive compensation, it will be an express adoption of the fee generation methodology by the Tribunal. Such an approach would mandate division of the entire 1983 royalty fund using fee generation methodology. The Tribunal -- and the parties litigating before it -- cannot have it both ways. Either fee generation is a viable approach, and is applicable to all parts of the 1983 royalty fund, or it is invalid, and is applicable to no part of the 1983 fund.

In their direct case, the Devotional Claimants have suggested that it is an appropriate time for the Tribunal to attempt to establish fair and objective decisional criteria governing allocation of the 1983 copyright royalty fund. Fee generation is, in the view of the Devotional Claimants, a fair and objective

means of dividing the entire royalty fund. Therefore, the Devotional Claimants do not object to use of fee generation methodology across the board. What the Devotional Claimants do object to is the apparent attempt of some claimants to use fee generation methodology with regard to those portions of the royalty fund where it is to their benefit, and to object to its use with regard to other portions of the fund where it is to their detriment. This Tribunal must adopt consistent standards for the entire fund and administer those standards impartially.

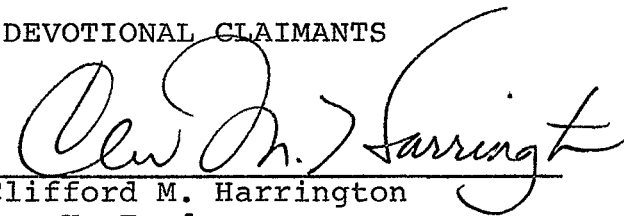
For the above reasons, the Devotional Claimants oppose the relief sought by NAB. The Devotional Claimants would have no

objection to use of the fee generation approach suggested by the NAB motion if it were applied consistently and fairly across the entire 1983 royalty fund.

Respectfully submitted,

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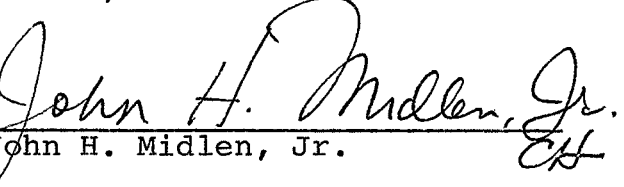


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